

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CONSTELLATION BRANDS U.S.
OPERATIONS, INC. d/b/a WOODBRIDGE
WINERY,

Employer,

v.

CANNERY, WAREHOUSEMEN, FOOD
PROCESSORS, DRIVERS AND HELPERS,
LOCAL UNION NO. 601, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Petitioner.

Case No. 32-RC-135779

**STATEMENT OF PETITIONER TEAMSTERS LOCAL 601
IN OPPOSITION TO THE EMPLOYER'S REQUEST FOR REVIEW**

ROBERT BONSALE, ESQ. (SBN 119261)
BEESON, TAYER & BODINE, APC
520 Capitol Mall, Suite 300
Sacramento, CA 95814-4714
Telephone: (916) 325-2100
Facsimile: (916) 325-2120
Email: rbonsall@beesontayer.com
Attorneys for Petitioner, TEAMSTERS LOCAL 601

I. STATEMENT OF THE CASE

CONSTELLATION BRANDS (Employer) operates a winery located in Acampo, California. Teamsters Local 601 (Union) filed a petition seeking to represent a unit of full-time and regular part-time operators in the Employer's Cellar Operations. A hearing was held in September 2014 after which post-hearing briefs were submitted by the parties.

Based on all the evidence submitted at the hearing, the Regional Director concluded that the petitioned-for unit was an appropriate unit, and that the Employer failed to meet its heavy burden of showing that this unit shared an overwhelming community of interest with any of the remaining classifications which would compel their inclusion in one bargaining unit. The Employer filed a Request for Review of the Regional Director's Decision. Pursuant to Section 102.67 of the Rules of the National Labor Relations Board, the Union hereby submits this Statement of Opposition.

II. ARGUMENT

The Employer raises three separate grounds for review of the Regional Director's Decision, each of which lacks merit. First, the Employer contends that there are substantial questions of law and policy because of the Regional Director's alleged departure from officially reported precedence. To the contrary, the Regional Director's Decision carefully hones to the law and policy set forth in *Specialty Healthcare*, 357 NLRB No. 83 (2011) and its progeny. The Employer utterly fails to articulate how the Regional Director departs from this precedence other than repeating the bland assertion that "the Board does not approve of fractured units, or combinations of employees that have no rational basis." See Employer's Brief at 8. While this is a correct statement of the law, the Regional Director's Decision carefully lays out the factual and legal basis to show that the Cellar Department employees do not constitute a fractured unit and there is a well-established evidentiary basis to conclude the petitioned-for unit is quite rational. The Regional Director's Decision does not depart from, but rather comports with the principles set forth in *Specialty Healthcare*.

Furthermore, the authorities cited by the Employer are either readily distinguishable (*Neiman Marcus Group, Inc.*, 361 NLRB No. 11 (2014) (petitioned-for unit of women's

shoes associates in two non-contiguous selling departments in a multi-store operation); *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127 (2010) (unit limited solely to poker dealers separate from craps, roulette and blackjack dealers with which they shared an overwhelming community of interest), or do not constitute officially reported Board precedent, which the Employer openly acknowledges. *Becker College*, Case No. 01-RC-081265 (2012).

Second, the Employer alleges that the Regional Director's Decision on substantial factual issues is clearly erroneous. However, the Employer completely misrepresents the record by selectively referencing only the evidence which supports its claim that there are some facts which would support a different appropriate unit. In fact, the Regional Director pointedly addressed this issue and correctly concluded that "while an argument can be made that a unit of cellar and barrel employees is an appropriate unit, there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be appropriate," citing *Overnite Transportation Company*, 322 NLRB 123 (2002). See Regional Director's Decision at ft. n. 20, p. 40.

Finally, the Employer asserts that the Board should consider reviewing the Regional Director's Decision as an opportunity to "clarify that notwithstanding its decision in *Specialty Healthcare*, traditional industry unit determination standards should continue to apply." Employer's Brief at 25. With all due respect, this issue has recently been clearly and succinctly addressed by the Board in *Macy's, Inc.*, 361 NLRB No. 4, slip op at 13-19 (2014), as noted by the Regional Director's Decision of which the Employer is requesting review. See Regional Director's Decision at ft. n. 19, p. 38-39. Thus, the Employer's invitation for reconsideration of well-established law should be rejected.

III. CONCLUSION

The Regional Director's exhaustive consideration of five days of testimony and hundreds of exhibits in the record evidence amply support the factual and legal conclusions set forth in the Decision and Direction of Election. Contrary to the Employer's assertions,

the Regional Director followed well-established principles of law set forth in *Specialty Healthcare* and its progeny. Furthermore, the Employer's contention that the Regional Director's factual conclusions were clearly erroneous, is based on nothing more than selective citation to the record evidence and total disregard for contrary testimony and exhibits. Finally, there are no compelling reasons to reconsider the standard for determining appropriate bargaining units under *Specialty Healthcare* and *Macy's, Inc.*

For all these reasons, the Employer's Request for Review should be denied.

Respectfully Submitted.

Dated: February 4, 2015

BEESON, TAYER & BODINE, APC

By: Robert Bonsall, Jgl
ROBERT BONSTALL

Attorneys for Petitioner CANNERY,
WAREHOUSEMEN, FOOD PROCESSORS,
DRIVERS AND HELPERS, LOCAL UNION
NO. 601, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

STATEMENT OF SERVICE

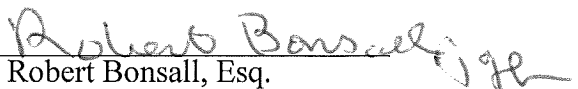
I hereby certify and declare under penalty of perjury, under the laws of the United States of America and the State of California, that a copy of STATEMENT OF PETITIONER TEAMSTERS LOCAL 601 IN OPPOSITION TO THE EMPLOYER'S REQUEST FOR REVIEW was served today, February 4, 2015, on the following parties or persons via facsimile and United Parcel Service:

Michael A. Kaufman, Esq.
Kaufman Dolowich & Voluck, LLP
135 Crossways Park, Suite 201
Woodbury, NY 11797
Phone: (516) 681-1100
Fax: (516) 581-1101
Email: mkaufman@kdvlaw.com
Counsel for Employer Constellation Brands

George P. Velastegui, Regional Director
National Labor Relations Board, Region 32
1301 Clay St., Rm. 300-N
Oakland, CA 94612
Phone: (510) 637-3300
Fax: (510) 637-3315
Regional Director for Region 32

National Labor Relations Board
Office of the Executive Secretary
1099 14th St. N.W.
Washington, D.C. 20570-0001
Phone: (202) 273-1000
Fax: (202) 273-4270
Headquarters

BEESON TAYER & BODINE, APC

By: 
Robert Bonsall, Esq.
520 Capitol Mall, Suite 300
Sacramento, CA 95814
Telephone: (916) 325-2100
Facsimile: (916) 325-2120
Email: rbonsall@beesonayer.com
Attorneys for Petitioner